

NHL lockout: Time becomes a major player in labour negotiations

Quoting Keith P. Burkhardt

December 29, 2012



According to someone who used to work inside the baseball players' union, Donald Fehr was the kind of boss who would let employees voice their opinions, so long as they were informed opinions. He would not scream during meetings: "He would be the traffic cop, sometimes calling 'time' – literally putting his fingers up and calling 'time.' "

And he would plan.

The former colleague, who requested anonymity, said Fehr was legendary for his need to "war-game" during labour negotiations. No statement he ever made from the podium was unscripted and no tactic was unplanned. He was calculating, meticulous and patient.

That approach, at least on the surface, appeared to earn a round of validation on Friday as details emerged of an unexpected offer from the National Hockey League. The offer, sent via email on Thursday, was reportedly 300 pages long, with concessions on items thought to be immovable.

The highlights, as reported by ESPN.com: Player contracts would be capped at six years, and not five, with the option for teams to sign their own players to seven-year deals; the contract value would be allowed to move up to 10% in value year-over-year from the first year, instead of 5%; hockey-related revenue would be split 50-50; and owners would provide US\$300-million to help cover existing contracts in a tighter economic climate, known as the "make whole" provision.

"We want to be back on the ice as soon as possible," NHL deputy commissioner Bill Daly said in a news release issued after those details emerged Friday.

"I don't think this is going to be an all-out win for either side," George Smith, a Queen's University professor and former labour negotiator, said on Friday. "I think they both will have compromised. But I think the players might have compromised less than they would have otherwise."

The players, led by Fehr and his brother, Steve, who is serving as special counsel, did not offer an immediate response. They reportedly held a conference call in the afternoon, and were planning to take their time to comb over the document.

Time, of course, is perhaps the union's last true lever of power in these negotiations. And Fehr has proven adept at managing — or, depending on the viewpoint, wasting — time.

"To get the best deal possible, you oftentimes need to push the other side as close to the edge of the cliff as you can," said Keith Burkhardt, a labour lawyer with Toronto-based Sherrard Kuzz LLP. "And then they finally say, 'I

give in, I give in — take what you want, and then we'll go on with life.”

Several outlets reported the NHL had finally given a drop-dead date for a season to begin, widely reported to be Jan. 19. A deal, then, would need to be reached within the next two weeks. That would suggest the cliff is approaching, but not quite close enough to end the negotiations just yet.

“It seems like it's the players who had more to lose than the owners,” Burkhardt said. “I think the owners believed from the beginning that fans would return. People can sign as many Facebook petitions as they want to say, ‘I'll never watch the NHL again if they don't have a deal by Jan. 1,’ but the fact of the matter is, we will all watch again.”

So the owners engaged strategically in talks, he said. Burkhardt suggested the players' solidarity might have been undercut by the volume of union members who fled to play in Europe instead of remaining on the sidelines.

And still, it was commissioner Gary Bettman who looked visibly shaken during a Dec. 6 question-and-answer session with reporters after another breakdown in negotiations. Fehr remained calm. And quiet, with no official talks between the two sides since Dec. 13.

In the meantime, the NHL has filed a complaint in federal court in New York asking to have the lockout declared legal, while also filing an unfair labour practice charge with the National Labor Relations Board in the United States. The NHLPA has given itself a Jan. 2 deadline to file a disclaimer of interest — to dissolve the union, and to potentially take the entire process down a path with an uncertain end.

That the email offer from the league arrived six days before that deadline may not be a coincidence. Somebody might even have been planning on it.

“Now, whether that was motivated by the NHLPA's authorization to disclaim interest, or simply by the fact that we are rapidly approaching the deadline to cancel the season, is difficult to tell,” said Nathaniel Grow, an assistant professor at the Terry College of Business at the University of Georgia. “It is probably a combination of the two.”

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